

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15786 of Roberta M.L. Lovatelli, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the minimum percentage of lot occupancy requirements [Paragraph 2001.3 (a)], to allow renovation of an accessory garage in an R-4 District at premises 238 9th Street, S.E. (Square 944, Lot 809).

HEARING DATE: February 10, 1993
DECISION DATE: April 7, and May 5, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property is located on the east side of 9th Street between C Street and Independence Avenue, and is known as premises 238 9th Street, S.E. It is zoned R-4.
2. The property is rectangular in shape with a frontage of 13.83 feet along 9th Street and a depth of 105.87 feet. The lot area of the site is 1,464.25 square feet.
3. The property is currently developed with a two-story, single-family, row dwelling and a detached garage. The existing dwelling and garage were constructed prior to the adoption of the 1958 Zoning Regulations and occupy 999.9 square feet of the total lot area.
4. The area surrounding the subject site is primarily developed with well-maintained, single-family, row dwellings and flats. The site is located within the Capitol Hill Historic District.
5. The applicant purchased the property in February 1992. At the time of purchase, the garage was in a deteriorated condition and had no roof.
6. The applicant proposes to repair the existing garage and add three feet in height to the structure to allow for loft-type storage space. The proposed storage space would supplement the limited storage area available in the existing row dwelling which has no basement and a very small attic area. The applicant indicated that the proposed modification to the garage does not include the construction of a second story. The loft-type storage space proposed would have a clearance of approximately four feet below the roof of the structure and would measure approximately half of the interior dimensions of the garage. The Board amended the advertised relief at the public hearing to delete a request for

a variance to allow for the construction of a second story in the subject case.

7. The applicant was issued Building Permit No. B-354884 on February 7, 1992. The work authorized by the issued building permit was identified as follows:

"Re-do garage walls, patch roof and replace rotted garage doors. Re-do brick walls, patch and repair. No new work. This permit does not authorize crossing sidewalk with trucks."

8. Based on the issuance of the building permit, the applicant employed contractors, and work on the garage commenced. While construction work was progressing, further review of the issuance of the building permit was made in response to a complaint from a citizen. Stop work orders were issued and the applicant was directed to seek appropriate variance relief from the Board.

9. Section 2001.3 of the Zoning Regulations provides that an addition may be made to a nonconforming structure provided that the following requirements are met:

- a. The structure shall conform to percentage of lot occupancy requirements; and
- b. The addition or enlargement itself shall conform to use and structure requirements; and
- c. The addition or enlargement itself shall not increase or extend any existing nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

10. The subject property is currently nonconforming as to lot width and lot area. The R-4 District requires a minimum lot area of 1,800 for a row dwelling with a minimum lot width of 18 feet. The subject lot has a lot width of 13.83 feet and a lot area of 1,464.25 square feet.

11. The R-4 District permits a maximum lot occupancy of 60 percent, or 878.6 square feet in this case. The existing dwelling and garage exceed the permitted lot occupancy by 121.3 square feet or 14 percent. The proposed improvements to the garage will not increase the existing lot occupancy.

12. Section 2500.4 of the Zoning Regulations provides that an accessory building shall not exceed one story or fifteen feet in height. The proposed garage height is fifteen feet. The applicant proposes to provide loft-type storage space spanning half of the interior of the garage. There will be no second story in the subject structure.

13. The subject site is narrower than the majority of lots in the subject square. Many of the surrounding lots, including the adjacent lot at 236 9th Street, are currently improved with one- and two-story garages and accessory buildings which either pre-date the Zoning Regulations or were constructed as a matter of right on larger lots.

14. The applicant stated that there is an exceptional condition inherent in the property because of its substandard area and width, and the existing structures which exceed the allowable lot occupancy. The nonconforming nature of the site predates the adoption of the Zoning Regulations. The applicant is unable to enlarge the site because it is bordered by improved properties to the north and south, a public street to the west, and a 20-foot wide public alley to the east.

15. The applicant further stated that strict enforcement of the Zoning Regulations would create a practical difficulty in that any improvement to the site would require variance relief. Without the requested variance relief, the applicant would be unable to replace the missing roof of the existing garage structure and would further be unable to create additional storage area on the site to supplement the limited storage space available in the existing dwelling.

16. The applicant stated that the proposed restoration and modification to the existing garage would be of brick and wood materials to match the existing shell and, further would be in keeping with the historic nature of the neighborhood. At the public hearing, the Board waived its 14-day filing requirement to permit the applicant to submit a letter from the previous owner of the property. The letter indicates that the garage needed extensive work at the time the property was sold including replacement of woodwork and repainting and replacement of brick work. The letter further indicates that, from the picture he was provided, he would deduce that the woodwork has been replaced and that the door pictured is the same size as the replaced double door.

17. The Office of Planning (OP), by memorandum dated February 1, 1993, recommended approval of the application. The OP was of the opinion that a practical difficulty exists in this case because of the substandard size of the lot, and the configuration of the existing structures on the site which was rendered nonconforming with the enactment of the current Zoning Regulations. Further, the OP was of the opinion that the proposed project would have no adverse impact on neighboring properties and the modifications are necessary to satisfy the applicant's need for storage space and to upgrade a deteriorated garage. In the opinion of OP, the project would not impair the intent, purpose and integrity of the

Zoning Regulations and Map in permitting a reasonable change to existing structures to make them more functional.

18. By letter dated February 2, 1993, Advisory Neighborhood Commission (ANC) 6B requested the Board to waive its seven-day filing requirement and allow for the filing of its report at the time of the public hearing because the ANC would not be able to review the case prior to its February 9, 1993 session. No representative of the ANC was present during the course of the public hearing and no additional written communication from the ANC was received by the Board at the time of the public hearing. The applicant testified that she was present at the meeting of the ANC and that they voted in favor of her request.

19. By letter dated February 8, 1993 and by representative at the public hearing, the Capitol Hill Restoration Society opposed the granting of the application. The bases for the opposition is summarized as follows:

- a. The applicant failed to meet the requisite burden of proof for the requested variance relief because the circumstances in the case are true for the entire neighborhood and do not uniquely affect the applicant's property.
- b. The applicant has not demonstrated any hardship in that the requested storage space could be accommodated within the previously existing 12-foot height of the garage.
- c. The proposed increase in height would adversely impact adjoining properties and would be out of character with the historic character of the alley.
- d. The partially completed construction appears to exceed 15 feet in height at present.

20. The record contains several letters from neighborhood residents, including the adjacent property owners at 236 and 240 9th Street, indicating that they have reviewed the plans and have no objection to the proposed project.

21. The record contains one letter in partial opposition to the application from the owner of 237 10th Street, S.E. The opponents were of the opinion that the applicant should be permitted to add a roof to the existing garage but should not be allowed to add an additional story because such addition was started without proper permits and would be out of character with the historic character of the neighborhood.

22. At the conclusion of the public hearing, the Board left the record open for the applicant to submit a revised set of plans showing accurate dimensions and the loft area, and to allow the applicant to submit a written report indicating conceptual review and approval of the revised plans by the Historic Preservation Review Board. The applicant testified that the plans had been reviewed by HPRB and that oral, but not written, approval had been received. The Board also directed staff to request the advice of the Office of Corporation Counsel as to whether the Board can condition this type of variance case, particularly with respect to the issue of height.

23. By correspondence received on March 24, 1993, the applicant submitted revised plans, as well as the minutes of the ANC 6B meeting of February 9, 1993 which indicated that the ANC recommended approval of the application by a vote of ten for, one against, and one abstaining. The ANC minutes did not identify any issues and concerns relative to the subject application.

24. The Board did not receive the written submissions requested from the HPRB or the Office of Corporation Counsel.

25. At its public meeting of April 7, 1993, the Board DEFERRED consideration of the application to allow for a majority of the Board members that participated in the case to be present for discussion.

FINDING OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The subject site is narrower than other lots in the block and is substandard with respect to lot area, lot width, and lot occupancy.

2. Other properties in the square are developed with similar garage structures.

3. No improvement to the existing structure can occur without the requested variance relief.

4. The proposal will not change the footprint of the existing structures.

5. The proposed height of 15 feet is permitted as a matter of right in the R-4 District and a second story is not proposed to be constructed.

6. No evidence was presented to indicate that the project would adversely impact light and air to adjoining properties.

7. The Historic Preservation Review Board is responsible for determining whether the proposal is compatible with the historic character of the area. The applicant must receive HPRB approval prior to completing the project.

8. The height of the structure will be verified by inspectors during the construction process and must comply with the height limitation as set forth in the Zoning Regulations.

CONCLUSION OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property. The Board further must find that the granting of the requested relief would not be of substantial detriment to the public good nor impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the requisite burden of proof. The Board concludes that the subject site is substandard with respect to lot area and width and that the existing improvements on the site exceed the maximum allowable lot occupancy requirements for the R-4 District. The Board concludes that the subdivision and development of the site occurred prior to the adoption of the current Zoning Regulations rendering the property nonconforming by current standards. The Board concludes that the subject site is narrower than other lots in the square and is surrounded by improved properties under different ownership and public rights-of-way. Therefore, the applicant is unable to acquire additional property to increase the size of the subject lot in order to bring it into compliance with the current requirements of the Zoning Regulations.

The Board concludes that strict enforcement of the Zoning Regulations would create a practical difficulty upon the owner in that she would be prohibited from repairing the existing deteriorated garage and would be unable to provide additional storage space on-site. The Board further concludes that the project would not impair the intent, purpose and integrity of the zone plan because it does not alter the footprint of the existing structures nor exceed the permitted height for an accessory garage, therefore no new or additional nonconformities would occur as a result of the proposed renovation and modification of the garage structure. The Board notes that several properties within the subject square are developed with similar-sized garages.

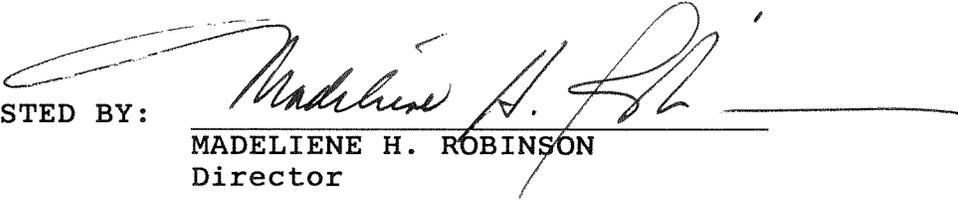
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The Board concludes that the Advisory Neighborhood Commission did not submit evidence of its issues and concerns in accordance with 11 DCMR 3307 and, therefore, "great weight" cannot be afforded to its submission. Accordingly it is ORDERED that the application is hereby GRANTED.

VOTE: 4-0 (Paula L. Jewell, Sheri M. Pruitt, and Angel F. Clarens to grant; William L. Ensign to grant by proxy; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

AUG 18 1993

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15786Order/SS/bhs